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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/613,436	07/07/2003	Barend J. Van Den Heever	03-5784	5213
7590	10/01/2004		EXAMINER	
William M. Hobby, III 157 E. New England Avenue, #375 Winter Park, FL 32789			AMERSON, LORI BAKER	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/613,436	VAN DEN HEEVER, BAREN ^J
	Examiner L Amerson	Art Unit 3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 07 July 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-15 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 07 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/7/03</u> .	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Objections

1. Claims 5 and 7 are objected to because of the following informalities:
 - a. Claim 5, line 3, "movable" should read --movably--;
 - b. Claims 5 and 7, "said other frame member" lacks antecedent basis;
 - c. Claim 7, line 3, "adjustable" should read --adjustably--. Appropriate correction is required.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

d. Claims 1-4, 7, 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns in view of Miller. Stearns discloses (fig. 1) a frame formed from two frame sections hinged together (112,123;fig. 1); a u-shaped swing portion (120) movably attached to one frame section having a seat (121); and a pair of arms (129). Stearns does not disclose the frame being folding, or a-shaped. Miller teaches a foldable frame (fig. 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stearns in view of the teaching of Miller such that a frame can be folded to provide portability. Regarding the shape, a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Regarding the language "said hinged folding

frame sections being foldable on said hinge from a folded storage position to an open operative position", "whereby a person sitting in said generally u-shaped swing portion seat and gripping and moving said handles can move said generally u-shaped swing portion and person sitting therein relative to said A-frame to thereby exercise the person's arms and upper body" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 2, the device includes a leg exerciser (130) attached to the frame. As to claim 3, the hinged sections have a lock (fig. 5b). As to claim 4, Stearns does not disclose an adjustable back. Miller teaches an adjustable back (fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stearns in view of the teaching of Miller that such a seat back can provide adjustability to a user while exercising. As to claim 12, Miller teaches a foot-supporting member mounted on the swing portion (fig. 1). As to claim 7, the leg exerciser is an adjustable bar (fig. 20) attached to the frame. Regarding the language "allowing said feet to be placed thereon while a person is seated in said seat and to push said u-shaped member, seat and person to exercise said legs" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 10, see the paragraph for claim 1. As to claim 11, the seat of Stearns has a back supporting member (fig. 1). As to claims 13, see the paragraph for claim 7.

e. Claims 5, 6, 8-9, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns and Miller as applied to claims 1 and 13 above, and further in view of Lin. As to claim 5, Stearns and Miller disclose all of the limitations of the claimed invention except for the limitations in claim 5. Thus, Lin teaches the swing portion movably attached to one frame section and hinged to one frame section (fig. 2). As to claims 6, 9 and 15, Miller teaches a foot-supporting member mounted on the swing portion (fig. 1) that is capable of being removed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to in view of Miller such that a foot support is capable of being mounted on a detachably mounted on a swing portion. As to claims 8 and 14, Stearns and Miller disclose all of the limitations of the claimed invention except for the arms being adjustable. Lin teaches adjustable arms. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stearns in view of the teaching of Lin that such arms be can be adjusted for a variety of different sized users.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Mon.-Fri from 8-5 p.m. Interviews Tue. And Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (703) 308-2698. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Amerson